THIRUMALAI & ANOR. v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson C.J.) October 14, 1960]

[K. L. — Selangor Criminal Appeal No. 57 of 1960]

Penal Code, s.385 — Extortion — Question of Discrepancies in Evidence.

The appellants were convicted and sentenced to nine months' imprisonment in the Sessions Court for putting a person in fear of injury in order to commit extortion in contravention of section 385 of the Penal Code. They appealed against the conviction and sentence contending that the learned President paid insufficient attention to certain considerations relating to the Police report and that the report should have discredited the evidence of the complainant because of certain discrepancies and also because evidence was admitted of events which happened after the date of this report.

Held: (1) there were no discrepancies between the report and the subsequent evidence of the person who made it and as such there was no material on which his evidence could be said to be discredited;

(2) there is no authority that excludes evidence of events which occurred after the making of the report if it is relevant and admissible.

CRIMINAL APPEAL.

Dato R. P. S. Rajasooria for the appellants.

Syed Hamzah bin Tahir (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): These two appellants were convicted in the Sessions Court at Kuala Lumpur for putting a person in fear of injury in order to commit extortion in contravention of section 385 of the Penal Code and sentenced to nine months' imprisonment. Against these convictions and sentences they have now appealed.

There was a great deal of evidence particularly that of the complainant and his son which if it was believed showed the appellants were guilty. On the other hand both the appellants gave evidence on their own behalf and if they were believed they were not guilty.

The President in a long and careful judgment has analysed the evidence in some detail and has stated that on his consideration of the evidence as a whole he was satisfied that the prosecution witnesses were speaking the truth in so far as their evidence implicated the two appellants and accordingly he convicted.

In so far as the question was one of credibility the President's finding had not been attacked.

It is said, however, that he paid insufficient attention to certain considerations relating to the Police report in connection with the crime which was made on 16th May. It was said in the first place that that report should have discredited the evidence of the complainant by reason of discrepancies and in the second place that evidence was admitted of events which happened after the date of that report.

With regard to the first of these points I can only say that for myself I see no discrepancy between the report and the subsequent evidence of the person who made it. It is true that in his subsequent evidence he gave evidence of facts that he did not mention in his report but on no particular fact did his evidence at the trial differ from what he said in his report. In my opinion therefore there was no material on which his evidence could be said to be discredited.

Again, it is said that evidence was given of the events which occurred after the making of the report. For myself I know of no authority that excludes such evidence if it is otherwise relevant and admissible; and indeed in the practice of the Courts it is admitted almost every day.

The appeal is dismissed.

Appeal dismissed.

TAI KIEN LUING v. TYE POH SUN & ORS.

[O. C. J. (Rigby J.) October 24, 1960]

[Penang — Originating Summons No. 74 of 1959]

Charity — Impossibility of performance — General charitable intention — Cy-pres — Resulting trust.

The settlor in this case established a charitable trust upon the terms and for the express purposes contained in the trust deed. The first part of the trust provided for a named school and hospital in Penang. The second part provided for named Schools and hospitals in specified places in China, and the deed further provided that "in the event of there being any other new Schools or Hospitals in the aforesaid places in China being subsequently opened the Head Trustee shall have full discretion and authority to include the same amongst the above". The question arose as to whether the second part of the trust was void for impossibility of performance, and if it was, whether there was a general charitable intention on the part of the settlor to devote this part of the property for charitable purposes generally.

Held: (1) the mere fact that the government of this country does not recognise the government of Communist China could not make the trust void for impossibility of performance. The sole question is on the practicability or otherwise of administering the trust fund. In the light of the evidence before the Court it could not be said that the trust was void for impossibility;

(2) there was a good charitable trust. Whether it might subsequently lapse by reason of impossibility of performance depended entirely on whether or not the Controller of Foreign Exchange would be prepared to sanction the application made by the trustees of the deed to remit moneys arising out of the trust fund to the specified institutions in China;

(3) in the event of the trust lapsing by reason of impossibility of performance, the terms of the trust could not be construed in favour of a general charitable intention, but there would be a resulting trust in favour of the residuary legatees of the settlor's estate.

Cases referred to:—

(1) *In re Robinson* (1931) 100, L.J., Ch. 321.
(2) *Re Vagliano* (1905) 75, L.J., Ch. 119.
(3) *Clark* v. *Taylor* 1, Drew, 644.
(4) *In re Ovey* (1885) L.R., 29, Ch. D. 560 at p. 564.
(5) *In re Watson* [1913] 1 Ch. 314.
(6) *Re Welsh Hospital* [1921] 1 Ch. 655.

ORIGINATING SUMMONS.

Ong Huck Lim for the plaintiff (applicant).

G. H. Conaghan and *Chew Choon Poon* for 1st, 2nd and 3rd defendants.